

REMARKS

Claims 1, 9-11 and 15 stand rejected on the ground of non-statutory obviousness-type double patenting as unpatentable over claims 1-7 of U.S. Patent 7,102,743 to Sakai et al (hereafter "Sakai et al").

As the Examiner noted in the Office Action:

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Such a terminal disclosure is attached hereto, and the double-patenting rejection should be withdrawn.

Claims 1-5, 8, 9 and 15-21 stand rejected under 35 U.S.C. §102(a) as anticipated by Sakai et al.

Sakai et al has a PCT publication date of February 26, 2004, which is subsequent to the foreign priority date of January 27, 2004 claimed in the instant application. Thus, Sakai et al is not a proper prior art reference under 35 U.S.C. §102(a).

Furthermore, Sakai et al has a §371(c)(1), (2) and (4) date of April 14, 2004, which is subsequent to the foreign priority date of January 27, 2004 claimed in the instant application. Thus, Sakai et al is not a proper prior art reference under 35 U.S.C. §102(e).

Accordingly, verified English translations of both foreign priority applications, namely, JP2004-018955, and/or JP2004-018957, are attached hereto in order to overcome this rejection.

The Examiner has indicated that claims 6, 7, 10-14 and 22 would be allowable if rewritten in independent form. In the telephone conversations conducted with the Examiner on November 27 and November 28, 2007, the Examiner verified that claims 10 and 11 were properly included in the double-patenting rejection and would not be allowable if rewritten in independent form.

In any event, Applicants respectfully defer this action until a FINAL Office Action, if any, is received.

In view of the aforementioned amendments and accompanying remarks, claims 1-2 are in condition for allowance, which action, at an early date, is requested.

Please ensure that JP-2001-043786, which was improperly indicated in the Information Disclosure Statement filed September 14, 2007 as "JP-2001-043876," is properly considered and appears on the face of any patent issuing from this application.

In the event that this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 04-1105.

Dated: February 15, 2008

Respectfully submitted,

By William L. Brooks
William L. Brooks
Registration No.: 34,129
EDWARDS ANGELL PALMER & DODGE
LLP
P.O. Box 55874
Boston, Massachusetts 02205
(202) 478-7370
Attorneys/Agents For Applicant